

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEVEN GOLDEN, Individually and
on Behalf of Themselves and All Others
Similarly Situated,

Plaintiff,

vs.

BoFI HOLDING, INC., GREGORY
GARRABRANTS, and ANDREW J.
MICHELETTI,

Defendants.

No. 3:15-cv-02324-GPC-KSC

**ORDER GRANTING JOINT
MOTIONS TO CONSOLIDATE
CASES, APPOINT LEAD
PLAINTIFF, AND APPROVE
SELECTION OF LEAD COUNSEL**

[ECF Nos. 9, 12, 17]

RALPH HAZAN, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

BoFI HOLDING, INC., GREGORY
GARRABRANTS, and ANDREW J.
MICHELETTI,

Defendants.

No. 3:15-cv-02486-GPC-KSC

**ORDER GRANTING JOINT
MOTION TO CONSOLIDATE
CASES**

[ECF No. 11]

Before the Court are parties' joint motions to consolidate the two cases above,
as well as parties' joint motions for appointment of lead plaintiff and approval of
selection of lead counsel. *Golden v. BoFI Holding, Inc.*, No. 3:15-cv-02324-GPC-

KSC, ECF Nos. 9, 12, 17; *Hazan v. BofI Holding, Inc.*, No. 15-cv-02486-GPC-KSC, ECF No. 11.

I. Consolidation

Fed. R. Civ. P. Rule 42(a) states that “[i]f actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay. “To determine whether to consolidate, a court weighs the interest of judicial convenience against the potential for delay, confusion and prejudice caused by consolidation.” *In re Oreck Corp. Halo Vacuum & Air Purifiers Mktg. & Sales Practices Litig.*, 282 F.R.D. 486, 490 (C.D. Cal. 2012) (citing *Southwest Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 807 (N.D. Cal. 1989); *Huene v. United States*, 743 F.2d 703, 704, *on reh’g*, 753 F.2d 1081 (9th Cir. 1984)). A district court has “broad discretion” in determining whether or not to consolidate actions. *See id.*; *see also Zhu v. UCBH Holdings, Inc.*, 682 F. Supp. 2d 1049, 1052 (N.D. Cal. 2010) (citing *Southwest Marine*, 720 F. Supp. at 806–807).

Upon review of the moving papers, the record, and the applicable law, the Court **GRANTS** parties’ joint motions to consolidate. Review of the two operative complaints show that both cases are class actions brought by respective Plaintiffs against the same Defendants, concerning the same alleged securities laws violations committed by Defendants in relation to BofI Federal Bank’s banking activities across the same time period, with largely similar factual allegations, the same causes of action, and the same requested relief. *Compare Golden Compl.*, No. 3:15-cv-02324-GPC-KSC, ECF No. 1, *with Hazan Compl.*, No. 15-cv-02486-GPC-KSC, ECF No. 1.

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1 **II. Appointment of Lead Plaintiff**

2 Under the Private Securities Litigation Reform Act (“PSLRA”), no later than
 3 20 days after filing a class action securities complaint, a private plaintiff or plaintiffs
 4 must publish a notice advising members of the purported plaintiff class of the
 5 pendency of the action, the claims asserted, and that any member of the purported
 6 class may move the court to serve as lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(A)(i).
 7 Not later than 60 days after the date on which the notice is published, any member
 8 of the purported class may move the court to serve as lead plaintiff of the purported
 9 class. *Id.*

10 Within 90 days after publication of the notice, the Court shall consider any
 11 motion made by a class member to serve as lead plaintiff. 15 U.S.C. § 78u-
 12 4(a)(3)(B)(i). If more than one action on behalf of a class asserting substantially the
 13 same claims has been filed and any party has sought to consolidate those actions, the
 14 court shall not make the lead plaintiff determination until after the decision on the
 15 motion to consolidate has been rendered. 15 U.S.C. § 78u- 4(a)(3)(B)(ii). The Court
 16 shall appoint as lead plaintiff “the member or members of the purported plaintiff
 17 class that the court determines to be most capable of adequately representing the
 18 interests of class members.” 15 U.S.C. § 78u-4(a)(3)(B)(i). The presumptively most
 19 adequate plaintiff is the one who “has the largest financial interest in the relief sought
 20 by the class” and “otherwise satisfies the requirements of Rule 23 of the Federal
 21 Rules of Civil Procedure.” 15 U.S.C. § 78u- 4(a)(3)(B)(iii)(I). “In other words, the
 22 district court must compare the financial stakes of the various plaintiffs and
 23 determine which one has the most to gain from the lawsuit. It must then focus its
 24 attention on that plaintiff and determine, based on the information he has provided
 25 in his pleadings and declarations, whether he satisfies the requirements of Rule
 26 23(a), in particular those of ‘typicality’ and ‘adequacy.’” *In re Cavanaugh*, 306 F.3d
 27 726, 730 (9th Cir. 2002).

1 Class members and movants Houston Municipal Employees Pension System
2 (“HMEPS”), John Marco, and Steven Golden, assert that HMEPS has the largest
3 financial interest in the relief sought by the class: HMEPS claims losses of
4 approximately \$215,340.52, Marco claims losses of approximately \$105,381.51,
5 Golden claims losses of approximately \$6,529.00, and non-moving class member
6 Multicultural Business Solutions Inc. claims losses of approximately \$46,148.60.
7 *Golden v. BofI Holding, Inc.*, No. 3:15-cv-02324-GPC-KSC, ECF No. 17 at 2. This
8 claim being undisputed, the Court finds that HMEPS is the class member with the
9 largest financial interest in the relief sought by the class.

10 The Court also finds that the typicality and adequacy requirements are met.
11 First, the typicality requirement is satisfied when “the presumptive lead plaintiff’s
12 claim arise[s] from the same event or course of conduct giving rise to the claims of
13 other class members and [are] based on the same legal theory.” *Foster v. Maxwell*
14 *Techs., Inc.*, No. 13-CV-00580-BEN-RBB, 2013 WL 5780424, at *5 (S.D. Cal. Oct.
15 24, 2013) (citation omitted) (internal quotation marks omitted). The claims must be
16 “reasonably co-extensive with those of absent class members; they need not be
17 substantially identical.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir.
18 1998). Like all other class members, HMEPS alleges that it purchased BofI securities
19 during the Class Period at prices that were artificially inflated by Defendants’
20 wrongful conduct and suffered damages thereby. ECF No. 12-2 at 6. HMEPS’
21 claims thus arise from the same events and are based on the same legal theory as the
22 claims of the other class members.

23 Second, representation is “adequate” when the interests of the plaintiffs and
24 their counsel do not conflict with the interests of other class members, and the
25 plaintiffs and their counsel will prosecute the action vigorously on behalf of the
26 class. *Hanlon*, 150 F.3d at 1020. It appears that HMEPS’ interests are aligned with
27 those of the other class members, and that HMEPS is willing and able to serve as

1 Lead Plaintiff. As discussed in greater detail below, HMEPS' retained counsel, the
 2 Lieff Cabraser law firm, is experienced in the area of complex securities class
 3 litigation and is clearly capable of representing the interests of the Class. Therefore,
 4 Court finds that HMEPS is the presumptive Lead Plaintiff under PSLRA.

5 The presumption that HMEPS is the most adequate Lead Plaintiff may be
 6 rebutted only upon proof by a member of the purported plaintiff class that HMEPS
 7 will not fairly and adequately protect the interests of the class or is subject to unique
 8 defenses that render them incapable of adequately representing the class. 15 U.S.C.
 9 § 78u-4(a)(3)(B)(iii)(II). No movant has come forward with such proof.
 10 Accordingly, the Court hereby **APPOINTS** Houston Municipal Employees Pension
 11 System as Lead Plaintiff.

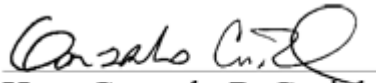
12 **III. Approval of Selection of Lead Counsel**

13 Under the PSLRA, once the court has designated a lead plaintiff, that plaintiff
 14 "shall subject to the approval of the court, select and retain counsel to represent the
 15 class." 15 U.S.C. § 78u-4(a)(3)(B)(v). If the lead plaintiff has made a reasonable
 16 choice of counsel, the district court should generally defer to that choice. *Cohen v.*
 17 *U.S. Dist. Court*, 586 F.3d 703, 712 (9th Cir. 2009). HMEPS asks the Court to
 18 approve their selection of Lieff, Cabraser, Heimann & Bernstein, LLP as lead
 19 counsel. It appears that Lieff Cabraser has devoted a substantial portion of its
 20 practice to class action securities fraud litigation and has obtained significant
 21 recoveries for injured investors in many cases. *See* Kruse Decl., Ex. D, ECF No. 12-
 22 3. In light of the firm's substantial experience in securities class action litigation, the
 23 Court **APPROVES** Houston Municipal Employees Pension System's choice of
 24 counsel and **APPOINTS** Lieff, Cabraser, Heimann & Bernstein, LLP as Lead
 25 Counsel.

26 **CONCLUSION**

27 Accordingly, **IT IS HEREBY ORDERED** that:

1 Dated: January 29, 2016

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3 Hon. Gonzalo P. Curiel
4 United States District Judge
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